United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 15-1715**
	)	**Issued: May 13, 2016**
DEPARTMENT OF THE NAVY, NAVAL AVIATION DEPOT, Cherry Point, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 17, 2015 appellant timely appealed the August 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's recurrence claim.

ISSUE

The issue is whether appellant established a recurrence of disability on March 19, 2001.

FACTUAL HISTORY

On October 7, 1999 appellant, then a 44-year-old painter, filed an occupational disease claim (Form CA-2) alleging that he developed asthma due to his workplace exposure to

[1] 5 U.S.C. § 8101 *et seq.*

polyurethane paints, isocyanates, lacquers, paint thinners, and paint dust. OWCP accepted appellant's claim for extrinsic asthma, with a July 6, 1999 date of injury.[2]

Although capable of work, appellant was unable to resume his regular duties as a painter. In a September 20, 1999 report, Dr. Carol A. Epling, a specialist in occupational medicine, advised that appellant should no longer work directly with isocyanate-containing products even when wearing full respiratory protection. She further noted that appellant should not work in an area where coworkers were using the same products. According to Dr. Epling, appellant could work without specific restrictions in an area ventilated by a system that served no areas where isocyanate-containing products were used.

In an October 15, 1999 report, appellant's then-treating physician, Dr. Edwin L. Bell, a Board-certified internist with a subspecialty in pulmonary disease, advised that appellant must avoid even a minute exposure to isocyanate-containing products. He also indicated that appellant should avoid areas of high temperature and humidity, and areas with high levels of dust, fumes, and odors because such exposure may trigger a flare-up of symptoms. At the time, appellant was relieved of all duties for a week. Dr. Bell reportedly returned to work on October 25, 1999.

Between September 1999 and April 2000, the employing establishment placed appellant in various positions in an effort to accommodate his asthma-related restrictions. Initially, it assigned appellant to work in the library adjacent to the paint shop. Appellant reportedly complained that the location was too close to the paint shop and the fumes were bothering him. In response, the employing establishment moved appellant to another library located in a different building. Although he successfully performed his assigned tasks, appellant complained that the position lacked growth potential. The employing establishment subsequently reassigned appellant to the engineering department as a supply clerk. Appellant had no reported problems performing the assigned duties, but again he complained about the lack of growth potential as a permanent supply clerk. The employing establishment then referred appellant to "940" where after approximately 10 minutes, he reportedly complained that he was too close to fumes and tanks located nearby. The branch head noted that appellant began to get red in the face and his breathing became labored. The employing establishment next placed appellant in production control at "940" as a material expediter. Upon arrival, appellant reportedly requested the material safety data sheets for the designated area. The employing establishment noted that, although the assigned work was removed from all processes, appellant complained of chest pains, used his inhaler, and advised that he was unable to work there. It sent appellant home on April 6, 2000 and later placed him on "enforced" leave.

In an April 18, 2000 memorandum, the employing establishment advised appellant that it proposed to remove him from service because of an inability to perform his duties as a painter. The document referenced several of Dr. Bell's reports regarding appellant's employment-related asthma, including his October 15, 1999 work restriction evaluation (OWCP 5), which noted, *inter alia*, that appellant must avoid even minute exposure to isocyanate-containing products. The April 18, 2000 memorandum further noted that the employing establishment considered

[2] The current record includes reference to another claim (xxxxxx051) for occupational asthma with an October 14, 1999 date of injury. However, the complete record associated with that particular claim is unavailable.

accommodating appellant's condition, but based on his medical restrictions "there [were] no positions or reasonable accommodation available."

The employing establishment subsequently placed appellant on paid administrative leave while attempting to find a suitable position to accommodate his asthma-related restrictions.

In an August 7, 2000 letter, Dr. Bell advised the employing establishment that he reviewed its July 25, 2000 "production controller" position description, and it seemed to represent a reasonable alternative for appellant to return to employment on a trial basis. Although the actual July 25, 2000 position description was not included, Dr. Bell quoted the employer's description in his August 7, 2000 letter. According to Dr. Bell, the employing establishment indicated that the production controller position would be "located in an environmentally controlled work area … in an office environment located in an industrial building." Additionally, appellant "may [be] require[d] … to visit other production centers that are not impacted by respiratory irritants." High heat and humidity would not impact the work, and appellant would "not be required to enter any work area exposed to smells, fumes and odors and respiratory irritants." The noted stipulations appeared to fit appellant's needs, but Dr. Bell cautioned that patients with occupational asthma were extremely sensitive to very small amounts of further exposure to sensitizing and irritating agents, and therefore, peripheral exposure to such agents may sometimes cause a problem. Dr. Bell indicated that appellant could certainly attempt work in the described position, but advised that further evaluation might be necessary should symptoms arise.

In late August 2000, appellant submitted a 13-page handwritten complaint to an employing establishment hotline. The contents of the complaint prompted the employing establishment to schedule a fitness-for-duty examination to address whether there was a psychological/psychogenic component to appellant's asthma.

On October 2, 2000 two employing establishment psychologists reviewed appellant's complaint and commented that it contained multiple paranoid themes.[3] They also noted that appellant described events that suggested he had experienced delusional thought processes, and possibly outright psychotic processes, including hallucinatory and/or illusionary experiences. Additionally, the psychologists advised that, if the content of the document reflected appellant's mental status at the time of composition and was not a dramatization, exaggeration, or fictional account, then there was evidence to suggest significant psychopathology. Lastly, the psychologists noted that in order to rule out current pathology, a full psychiatric or psychological examination was warranted.

Dr. Tamara C. Babb, a Board-certified family practitioner, conducted a fitness-for-duty examination on behalf of the employing establishment.[4] She also reviewed the staff psychologists' October 2, 2000 report. In her October 5, 2000 report, Dr. Babb noted that

[3] The October 2, 2000 report was signed by D.W. LaBrie, Ph.D. and C. Nadig, Psy.D. Appellant was not interviewed by either psychologist.

[4] Dr. Babb was the head of the occupational health clinic at Naval Hospital Cherry Point. She examined appellant on September 14, 2000.

appellant admitted to a psychogenic trigger for his asthma dating back to at least January 2000. Appellant reportedly stated that stress in the workplace caused him to have multiple episodes of shortness of breath when not exposed to chemicals. Additionally, he advised that his private physicians were unaware of this trigger. Dr. Babb further noted that appellant's physicians were apparently unaware of a prior hospitalization for psychosis. However, appellant reportedly denied any history of mental illness. Dr. Babb referenced an August 1991 involuntary commitment to a Virginia psychiatric institution that was later overturned. Appellant reportedly left the facility "against medical advice," and he denied having received any mental health care since.[5]

On physical examination, Dr. Babb noted that appellant displayed no evidence of frank psychosis, but he exhibited a marked degree of hostility and paranoia. Appellant reportedly denied any suicidal ideation, and jokingly admitted to homicidal ideation when he "comes on base." Dr. Babb also reviewed appellant's hotline complaint. She characterized the complaint as rambling and incongruent, and noted there were several prevalent themes regarding alleged plots by the employing establishment involving murder, harassment, abduction, sexual assault, impersonation, drugging of victims, and radiation/laser threats. Dr. Babb indicated that the language used was suggestive of paranoia and psychosis, with evidence of delusions and/or hallucinations. She also noted having requested a consultation from the psychology department, and included the staff psychologists' October 2, 2000 findings as an attachment. Dr. Babb strongly recommended that the employing establishment prohibit appellant from returning to work in any capacity unless he agreed to an extensive psychiatric evaluation. She also questioned appellant's diagnosis of occupational asthma due to isocyanate exposure. Dr. Babb indicated that it was conceivable that the psychogenic trigger was the actual cause of appellant's respiratory problems, and not occupational exposure to isocyanates.

There is no indication from the record that the employing establishment followed-up on Dr. Babb's recommendation that appellant be referred for a psychiatric evaluation.

In October 2000, appellant applied for disability retirement through the Office of Personnel Management (OPM). The employing establishment decided to hold its removal action in abeyance pending a decision from OPM regarding appellant's disability retirement.

In a March 7, 2001 memorandum entitled "[Amendment to Decision on Proposed Removal from Employment]," the employing establishment advised appellant that he would be separated from federal service on March 17, 2001.[6] The memorandum explained that the employing establishment recently learned that OPM denied appellant's application for disability retirement, and therefore, the proposed removal action would no longer be held in abeyance.

[5] Dr. Charles D. Godwin, a Board-certified psychiatrist, evaluated appellant on August 29, 1991 and advised that he was cleared to return to work. He also indicated that no medications were presently necessary.

[6] The March 7, 2001 memorandum referenced an earlier letter dated November 15, 2000; however, this document is not part of the current record.

A March 15, 2001 notification of personnel action (SF 50-B) indicated that, effective March 17, 2001, the employing establishment removed appellant from service. The reason for the removal was appellant's inability to perform the duties of his position as a painter.

On March 26, 2001 appellant filed a claim for compensation (Form CA-7) beginning March 19, 2001. He identified his recent termination and his disability due to occupational asthma as the reasons for his wage loss.

In a March 26, 2001 report, Dr. Bell diagnosed occupationally-related asthma. He explained that while refinishing and painting aircraft parts, appellant was clearly exposed to isocyanates, which have been widely known to precipitate sensitization and development of asthma in a portion of the population exposed to such agents. Dr. Bell further noted that appellant previously had to leave the work facility due to episodes of coughing and dyspnea associated with his exposure, and there was no question that continued exposure to such agents would be expected to produce a gradual worsening of his respiratory symptoms and progressive disability. Additionally, he explained that once asthma has developed from such sensitizing agents, it persists indefinitely for at least 50 percent of patients, even if no further exposure is ever encountered. Dr. Bell further explained that once the airways have become sensitized, they will react to nonspecific stimulation such as occurs with exposure to high heat, humidity, dust, fumes, and odors of most any sort. Since having first evaluated appellant in August 1998, Dr. Bell noted that he continued to manifest waxing and waning symptoms of coughing, wheezing, and dyspnea even with removal from his area of previous employment and exposure. With his symptoms having persisted for more than two and a half years thus far, Dr. Bell considered appellant's condition to be permanent in nature. He further indicated that appellant's condition would clearly be anticipated to worsen with further exposures to his present occupation, and avoidance of the previous outlined exposures would be a permanent and absolute life-long recommendation. Dr. Bell stated that no amount of workplace accommodation would alleviate appellant's condition, and therefore, he must be considered totally and permanently disabled from performing his job as an aircraft painter.

On April 3, 2001 the employing establishment challenged appellant's claim for wage-loss compensation. While acknowledging appellant's March 17, 2001 removal due to an inability to perform the duties of his position, the employing establishment represented that its decision was based on a combination of all the medical evidence gathered in relation to appellant's physical and mental stability. The employing establishment stated that it was prepared to accommodate appellant's occupational asthma, but his emotional stability and paranoia was something it was unable to accommodate.

Although OPM initially denied appellant's application, he ultimately received a disability annuity effective April 17, 2001.

In a November 8, 2001 follow-up report, Dr. Bell noted that appellant no longer worked at the naval base, but was currently working on a tugboat hauling barges from New York City containing debris from the World Trade Center. Appellant was tolerating his latest job much better, and his only difficulty was with occasional painting. Dr. Bell diagnosed occupational asthma, which was stable. He advised appellant to follow-up in six months.

OWCP did not formally adjudicate appellant's March 26, 2001 Form CA-7 for disability beginning March 19, 2001. More than four years elapsed with no apparent activity. In early 2006, appellant requested a copy of his case file, as well as various FECA-related forms, which OWCP either provided directly or referred appellant to his former employer to obtain.

In correspondence dated December 26, 2006, appellant claimed that OWCP owed him money dating back to his firing in 2001. He also noted that he earned $16,000.00 in 2005 and $600.00 in 2006.

Between March and August 2007, OWCP received a total of six follow-up reports from Dr. Bell covering the period October 14, 2003 through August 13, 2007. When he examined appellant on October 14, 2003, approximately two years had elapsed since Dr. Bell had last seen him. At the time, appellant was reportedly doing well and had not been on any medications since his last visit. Dr. Bell diagnosed a history of occupational asthma, which was currently stable. He advised appellant to return on an as needed basis. Appellant returned on March 26, 2004. Dr. Bell noted that appellant continued to work on a tugboat where he was not exposed to a great deal of paints, organic solvents, or materials that aggravated his asthma. He further noted that appellant had not taken any medications for quite some time. Dr. Bell diagnosed "occupational asthma, seemingly stable" and allergic rhinitis, and advised appellant to return on an as needed basis.

In a November 11, 2005 follow-up report, Dr. Bell noted that appellant was out of work, and was reportedly having little, if any, difficulty with his breathing. However, appellant reported some wheezing with exertion. Dr. Bell noted that appellant's recent pulmonary function studies showed "worsened abnormalities." He diagnosed mild and persistent asthma and allergic rhinitis. Dr. Bell advised appellant to use an albuterol inhaler on an as need basis, and to consult with him if his symptoms should worsen. Otherwise, appellant was to return in six months for follow-up pulmonary function studies. He returned on August 17, 2006, and reportedly had been unemployed for a number of months and was currently seeking work. Appellant had no symptoms with respect to his breathing. Dr. Bell surmised that being out of work certainly was not detrimental to appellant's medical condition. He further noted that appellant was not taking any medications regularly. Appellant's recent spirometry was quite stable in comparison to when he was last seen on November 11, 2005. Also, his physical examination revealed that he was in no acute distress. Dr. Bell diagnosed asthma, which was currently stable, as well as allergic rhinitis, also stable. He advised appellant to return in six months for a repeat spirometry. Dr. Bell also advised that, when looking for work, appellant should try to pick a situation that did not expose him to significant irritants or asthma sensitizers, as he clearly had difficulty with this type of exposure in the past.

Dr. Bell also saw appellant on February 13 and August 13, 2007. On both occasions he diagnosed occupationally-related asthma, which was stable. Dr. Bell's February 13, 2007 follow-up notes indicated that appellant remained unemployed, and his latest spirometry was not significantly changed from his August 2006 study. Appellant did not undergo additional testing during the August 13, 2007 examination. The latest physical examination showed him to be in no acute distress. Dr. Bell indicated that he was clinically stable, and he instructed appellant to follow-up in six months.

On September 25, 2007 OWCP advised appellant to file a Form CA-7 with the employing establishment in order to trigger a review of his claim for compensation following his March 17, 2001 separation.[7] It also wrote to the employing establishment inquiring whether appellant was removed because of a letter he sent or because he was unable to perform his duties as a painter. On October 10, 2007 OWCP provided appellant a Form CA-7 and asked that he complete his portion of the form and submit it to the employing establishment. It also asked that appellant provide documentation regarding his OPM disability.

In an October 26, 2007 memorandum to OWCP, the employing establishment noted that it had initially proposed removing appellant for his inability to perform based on the asthmatic condition alone. But after receiving an August 2000 multi-page handwritten document from appellant, the employing establishment questioned his mental stability, and therefore, initiated the fitness-for-duty (FFD) process. The employing establishment further explained that the proposed removal was held in abeyance pending OPM's decision regarding appellant's disability retirement. But before the results of the FFD could be obtained, OPM denied the application for disability retirement, and the employing establishment moved forward with the removal from federal service. The employing establishment represented that it did not amend the reason for removal. Despite not having formally changed the stated reason for appellant's removal, the employing establishment reiterated its April 3, 2001 statement that the decision was a combination of all medical evidence gathered in relation to both appellant's physical and mental health.

An OPM representative contacted OWCP on March 31, 2008 and advised that appellant was currently receiving OPM disability retirement benefits.

Appellant continued to inquire about the status of his claim for wage-loss compensation. In correspondence dated July 25, 2008, OWCP advised him that his case remained open for medical benefits with respect to his accepted condition of extrinsic asthma. The July 25, 2008 correspondence made no mention of the status of appellant's claim for wage-loss compensation beginning March 19, 2001.

Between August 2008 and October 2010, appellant made several inquiries regarding his entitlement to FECA wage-loss benefits. He also made more than one request for a copy of the complete case record, which OWCP provided. But with respect to the status of the claim for compensation, OWCP was either nonresponsive or claimed to have been unaware of appellant's March 26, 2001 Form CA-7 requesting compensation.

After a four-year lapse in communication, appellant resumed his status inquiries in October 2014. On March 15, 2015 he wrote to OWCP inquiring whether he needed to file another claim to receive the compensation he was owed dating back to 2001. Appellant noted that he had been receiving OPM benefits since 2001, and that he had not worked since 2006. In a March 25, 2015 letter to OWCP, he noted that he left the employing establishment in 2001 and received OPM disability benefits. Appellant further indicated that he worked part of 2001, and worked from 2002 through 2005, then part of 2006. He advised that he had not worked since 2006. Appellant's OPM disability retirement was only 40 percent. He explained that he wanted

[7] As previously noted, appellant had already filed a Form CA-7 on March 26, 2001.

FECA benefits to make up the difference from 2001 to 2006 and for total disability from 2007 to 2015. On March 26, 2015 appellant asked OWCP to explain the difference in payment if he switched from OPM disability to FECA wage-loss compensation. He also wanted to know whether compensation would be based on his 2001 pay rate or 2015 wages.

On April 10, 2015 OWCP informed appellant that his claim has been administratively closed because there had been no medical activity for a period of more than two years. It advised appellant that if he wanted to reopen the claim, he needed to file a notice of recurrence (Form CA-2a).[8]

On April 21, 2015 OWCP received a Form CA-7 requesting a schedule award. It interpreted it as a claim for recurrence.

In a May 1, 2015 recurrence development letter, OWCP acknowledged receipt of appellant's recent Form CA-7. It also noted that his claim had been accepted for extrinsic asthma with a July 6, 1999 date of injury. The recurrence development letter further noted that following his original injury, appellant "continued working until [May 19, 2001] when [he] was separated from employment due to causes unrelated to the injury dated [July 6, 1999]." OWCP also explained the different ways of establishing a recurrence of disability (spontaneous change in accepted condition or withdrawal of a light-duty assignment), and advised appellant of the need to submit additional factual and medical evidence.

On May 7, 2015 appellant submitted the requested factual information. However, he did not submit the requested medical information, but instead referred OWCP to the employing establishment's occupational health clinic and Dr. Bell's office for their respective treatment records. Appellant also noted that he had a problem with his OPM benefits in 2013, and as a result, he had no insurance and could not get medical treatment.

By decision dated August 4, 2015, OWCP denied appellant's claim for recurrence of disability. The decision noted that, following his injury, appellant returned to work on September 20, 1999 in a limited-duty capacity. OWCP further found that appellant continued to work in that capacity "until [March 17, 2001] when [he was] separated from work due to a nonwork-related condition." It also noted that it requested additional factual and medical evidence regarding appellant's claimed recurrence. Although he submitted the factual questionnaire on May 7, 2015, appellant had not provided medical evidence to support his claimed recurrence. Consequently, OWCP found that appellant had failed to establish that he was disabled due to a worsening of his accepted condition.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[9] Recurrence of disability also means an inability to work that takes place

[8] OWCP also provided information regarding how to file for a schedule award.

[9] 20 C.F.R. § 10.5(x).

when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his established physical limitations.[10] Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.[11] A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties or other downsizing or where a loss of wage-earning capacity determination is in place.[12] Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.[13]

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence is causally related to the original injury.[14] This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.[15] The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.[16]

ANALYSIS

The Board finds that the case is not in posture for decision.

As early as September 1999, Dr. Bell advised that appellant was unable to resume work as a painter due to his accepted condition. The record indicates that the employing establishment made several attempts to accommodate appellant's asthma-related work restrictions. However, on April 6, 2000 the employing establishment sent him home. For the next eleven months appellant was in paid leave status until being removed from service effective March 17, 2001.[17] OWCP found that his March 17, 2001 separation was due to a "nonwork-related condition." However, this finding does not accurately reflect the current evidence of record.

The removal action was formally initiated on April 18, 2000. At that time, the employing establishment advised appellant of its proposed removal based on Dr. Bell's opinion regarding

[10] *Id.*

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

[12] 20 C.F.R. §§ 10.5(x), 10.104(c) and 10.509; *see id.* at Chapter 2.1500.2b.

[13] *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

[14] 20 C.F.R. § 10.104(b); *see supra* note 11 at Chapter 2.1500.5 and 2.1500.6.

[15] *See S.S.*, 59 ECAB 315, 318-19 (2008).

[16] *Id.* at 319.

[17] In its August 4, 2015 decision, OWCP incorrectly noted that appellant continued working in a limited-duty capacity until March 17, 2001.

his occupational asthma and associated work restrictions. The April 18, 2000 memorandum further noted that the employing establishment considered accommodating appellant's condition, but based on his medical restrictions "there [were] no positions or reasonable accommodation available." The employing establishment did not identify any additional reason(s), medical or otherwise, for the proposed removal. It was strictly based on appellant's inability to perform his painter duties as a result of his employment-related asthma. The record indicates that the employing establishment subsequently held the removal action in abeyance pending a decision from OPM regarding appellant's application for disability retirement.[18] And when OPM initially denied appellant's application, the employing establishment renewed its efforts, culminating in appellant's removal effective March 17, 2001.

The March 7, 2001 memorandum advising appellant of his upcoming separation did not specify the grounds for removal. However, a March 15, 2001 SF 50-B indicated that appellant was removed because of his inability to perform the duties of his position. Once appellant filed his March 26, 2001 Form CA-7, the employing establishment represented that the March 17, 2001 removal was based on a "combination of all the medical (sic) gathered in relation to [appellant's] physical and mental stability." Several years later, the employing establishment made a similar representation regarding the basis for appellant's March 17, 2001 removal.

In its October 26, 2007 memorandum, the employing establishment noted that it initially proposed to remove appellant based solely on his asthma. But after receiving appellant's August 2000 hotline complaint, the employing establishment had concerns about his mental stability. Two employing establishment psychologists reviewed appellant's 13-page handwritten complaint, and another employing establishment physician, Dr. Babb, reviewed the complaint and examined appellant on September 14, 2000. Dr. Babb, a family practitioner, noted there was significant evidence that appellant "may continue to suffer from mental illness with some features of intermittent psychosis and paranoia." She recommended that appellant be prohibited from returning to work unless he agreed to an extensive psychiatric evaluation. The two employing establishment psychologists similarly recommended a full psychiatric evaluation. However, there is no evidence in the record that the employing establishment followed the advice of its medical staff regarding further psychiatric evaluation. More than 5 months elapsed between Dr. Babb's October 5, 2000 fitness-for-duty (FFD) evaluation and appellant's March 17, 2001 removal. The employing establishment represented that although it "did not amend the reason for removal," the decision "was a combination of all medical (sic) gathered in relation to both physical and mental health."

As previously noted, OWCP found that appellant's March 17, 2001 separation was due to a "nonwork related condition." At a minimum, appellant's removal was in part due to his employment-related asthma, as clearly documented in the April 18, 2000 notification of proposed removal from employment. Moreover, the employing establishment acknowledged that it did not amend the reason for removal. Even if it was justifiably concerned about appellant's mental health status, the current record nonetheless fails to establish that the March 17, 2001 removal was unrelated to appellant's accepted condition. Generally, a

[18] The decision to hold the removal action in abeyance was reportedly documented in a November 15, 2000 memorandum, which is not part of the current record.

withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.[19]

OWCP's finding that appellant's separation was due to a "nonwork-related condition" is not supported by the record. Because of this error, OWCP failed to address whether the employing establishment's decision to send appellant home on April 6, 2000, and ultimately remove him from service, constituted a recurrence of disability under 20 C.F.R. § 10.5(x). Accordingly, the case shall be remanded for further consideration.

CONCLUSION

The case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2015 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: May 13, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[19] *Supra* note 11 at Chapter 2.1500.6a(4) (June 2013).